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Summary record of the 2262nd meeting
Held at Headquarters, New York, on Friday, 18 March 2005, at 10 a.m.

Chairperson: Ms. Chanet

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The meeting was called to order at 10.15 a.m.

Consideration of reports submitted by States parties under article 40 of the Covenant and of country situations (*continued*)

Fourth periodic report of Mauritius (*continued*) (CCPR/C/MUS/2004/4)

1. *At the invitation of the Chairperson, the delegation of Mauritius took places at the Committee table.*

2. **The Chairperson** invited the delegation of Mauritius to continue answering the questions raised by Committee members with regard to questions 1 to 16 on the list of issues for the report.

3. **Mr. Boolell** (Mauritius) said that questions had been raised as to the legal status of the protections guaranteed under the Covenant, in particular those under articles 5, 11 and 13, in Mauritian law and the Constitution. He assured members of the Committee that Mauritian democracy was firmly anchored on respect for the rule of law, respect for the Constitution and its guarantees and respect for the doctrine of the separation of powers. Even if the exact wording of the Covenant protections was not found in the Constitution, Mauritius was fully committed to giving effect to all the rights in the Covenant through constitutional processes. The Parliament and the Supreme Court had repeatedly given serious consideration to the obligations Mauritius had assumed in ratifying the Covenant and to recommendations and comments by the Committee with regard to the situation in the country and had sought to ensure that the necessary protections of rights were enshrined in the Constitution and laws. With regard to rights under article 11 of the Covenant, the Supreme Court had by and large shown a clear desire to strengthen due process protections in domestic law, although there had been some contradictory judgements in recent years. He cited various cases mentioned in the report in that connection. With regard to article 13 of the Covenant, he reviewed the written reply submitted for question 17 of the list of issues, noting that Mauritius had no specific legislation dealing with refugees or asylum issues. It had succeeded to the 1951 Refugee Convention on gaining independence but had not ratified the 1967 Protocol. He cited a recent case in which an individual who was an illegal immigrant and was wanted for a capital crime in his home country had been ordered to be deported by the Mauritian courts. However, that person had been able to apply for asylum and appeal the extradition order to the Supreme Court, which had not, as yet, handed down a decision on the matter.

4. Responding to questions about the National Human Rights Commission, its appointment, functions and security of tenure, he drew the attention of the Committee to the information in the written replies. The Commission was headed by a former Supreme Court judge assisted by two persons knowledgeable and experienced in human rights matters, which resulted in a body with status and independence and compatible with the Paris Principles relating to the status of national human rights institutions. Although the Commission was financed under the budget of the Prime Minister's Office, it reported to the National Assembly and remained quite independent of any other body. Although there was a two-year time deadline for submitting complaints, there were active "watch dogs" in Mauritian society, namely, the press, non-governmental organizations and the legal profession, and the time bar did not seem unduly short.

5. Referring to the allegation of police brutality in the case of Martine Desmarais, he noted that the matter was still in the hands of the Director of Public Prosecutions, pending completion of the preliminary inquiry. Should there be prima facie evidence of a criminal offence, the case would be referred to the Assizes. The same was true of the Isabelle Maigrot case, in which the accused person was contesting a confession said to have been made by him under police interrogation. In both cases, the decision rested with the Director of Public Prosecutions.

6. The National Human Rights Commission (NHRC) took a global approach to human rights, concerning itself with such questions as the rights of detained persons and conditions of detention as well as with individual cases, and made recommendations on the basis of its findings. As indicated by the statistics set out in the annex to his country's fourth report, a number of complaints against police officers lodged with the Complaints Investigation Bureau had, on being reviewed by the NHRC, resulted in prosecutions. Moreover, a new law on torture was in place and had already been invoked against a law enforcement officer, leading to him being removed from his post.

7. Concerning counter-terrorism measures, no case had yet arisen under the Prevention of Terrorism Act (2002). The question of its conformity with the provisions of the Constitution would have to be duly determined by the Supreme Court, particularly with regard to the possibility of its entailing a derogation from chapter 2 of the Constitution. He made an analogy with the Dangerous Drugs Act (2002) where the Court had found that there were adequate safeguards against deprivation of liberty. He welcomed the suggestion that the safeguards available under that Act might be extended to the Prevention of Terrorism Act. Presumption of innocence was a fundamental principle in Mauritius; appropriate safeguards existed and were applied. In particular, video-recordings were made of detained persons, ensuring a full and accurate record of interviews and movements throughout detention. Objections raised by such persons during their detention were registered and signed by a third party. Any subsequent challenge would go before the courts and no one could be convicted of terrorism unless all the relevant conditions had been met.

8. **Ms. Narain** (Mauritius), in response to a question put at the previous meeting, noted that no policy decision had been taken in her country on euthanasia, which would be treated as murder with mitigating circumstances. The code of practice of the medical profession offered protection against abuses.

9. On the issue of equal pay for men and women, she referred to the Sex Discrimination Act (2002), under which complaints could be lodged with the Sex Discrimination Division, which was part of the NHRC. Every effort was made to provide appropriate relief in such cases, notably through financial compensation, over and above any recourse to the courts.

10. In response to the NGO report alleging a very high rate of physical violence against women in Mauritius, she said that the problem did exist in her country but that the figure quoted was inflated. On the trafficking of women and children, a group headed by a representative of the Attorney General's Office was studying the question at the regional level and its findings would be communicated to the Committee in due course. Few cases were reported of child labour, which was seldom exploitative, usually amounting to help for parents. The Ministry of Labour and the Ministry for Women were monitoring the situation. On the question of abortion, few cases had been reported to the Director of Public Prosecutions and there had been no prosecutions. In response to a concern expressed about the lack of follow-up to the report by the relevant task force, she referred to the difficulties presented by religious susceptibilities.

11. **Mr. Boolell** (Mauritius), referring to the part of his country's report on the Chagos Archipelago, emphasized the priority given by Mauritius to the bilateral approach in its efforts to restore its sovereignty. He regretted that the United Kingdom had continued to act unilaterally and had not responded to his country's call for dialogue. His Government was continuing to explore all avenues to reach a settlement, bearing in mind particularly the tragic human consequences of the forcible expulsion of the inhabitants of Chagos and the continuing need to arrive at an acceptable solution to the problem.

12. **Mr. Amor** wished to have fuller information about the place of the Covenant in the legislation of Mauritius, particularly in terms of the hierarchy of norms.

13. **Mr. Bhagwati** asked for clarification of the role of the NHRC, having regard notably to reports from an NGO that it passed on complaints to a Criminal Investigation Bureau. Was it simply an investigative agency, without the power to reach a determination? Could it file an action in court, and had it ever done so? He wished to know in how many criminal cases it had intervened. He was also curious about the prohibition on abortion and wondered whether the Government might not envisage the adoption of legislation to permit it in certain specific circumstances.

14. **Sir Nigel Rodley**, referring to the list provided of police officers prosecuted in Mauritius, remarked that the only penalty imposed since 2000 had been a fine. With regard to the police officer found guilty of assault, he would appreciate knowing whether the assault had occurred during interrogation. Referring again to the Martine Desmarais case, he wondered why there had been such a long delay, noting that there had been no preliminary hearing since 2002.

15. He also raised the question of the two-year limitation, both on cases referred to the NHRC and on acts committed by public officials. He wondered whether the Public Officers Protection Act served as a statute of limitations. If information about a killing came to light more than two years later, would no

action be taken? How did the system of recourse to laws and institutions operate under such constraints?

16. **Mr. Gele Ahanhanzo** requested further information about the place and role of the Judicial Committee of the Privy Council, referred to in the report.

17. **Mr. Boolell** (Mauritius) said that the Supreme Court had on several occasions stated very clearly that any interpretation of the Constitution should be compatible with the Covenant, and the Judicial Committee of the Privy Council had made pronouncements to that effect.

18. The National Human Rights Commission was an investigative body which followed up its recommendations and their results. It sent its conclusions to the Ministry of Justice and Human Rights, which reported back to the Commission on any action to be taken on the complaint, including referral to the Director of Public Prosecutions.

19. The Government was still debating the question of abortion and would take a policy decision in the future.

20. He did not know whether the incidents of assault had taken place during interrogation. Sentences were commensurate with the offence, and police officers were dismissed from the force following conviction. The delay in the *Maigrot* case had been caused by the referral to the Supreme Court of a dispute about disclosure of documents.

21. Pursuant to government policy the Public Officers Protection Act was very rarely invoked, and the two-year period did not arise in relation to cases before the courts.

22. The Supreme Court had ruled that its decisions could be referred to the Judicial Committee of the Privy Council if they involved matters of law or great public import. The right of appeal to the Privy Council would not be abolished as there was no consensus on the need to create an appellate court as the apex of the judicial system.

23. **The Chairperson** invited the delegation of Mauritius to address questions 17 to 24 on the list of issues.

Freedom of movement and prohibition of arbitrary expulsion of aliens (articles 12 and 13 of the Covenant)

24. **Mr. Boolell** (Mauritius), replying to question 17, said that Mauritius had no specific refugee or asylum legislation, and had not acceded to related international instruments because of its size and lack of resources. Decision to grant asylum rested with the executive branch of government, subject to judicial approval. If asylum was not granted Mauritius acted humanely, as evidenced by the transfer of a number of Congolese asylum-seekers to Australia. Deportation could be challenged before the Supreme Court by way of judicial review, although an application would not automatically result in a stay or suspension of the deportation order.

Right to a fair trial (article 14 of the Covenant)

25. **Mr. Boolell** (Mauritius), replying to question 18, said that a criminal trial lasted on average between one and two years, depending on the complexity of a case, the availability of witnesses and counsel and other factors. In reply to question 19 he said that legal aid applied to almost all civil and criminal proceedings, and was always granted to minors.

Right to freedom of religion (article 18 of the Covenant)

26. **Mr. Boolell** (Mauritius) said that following the decision of the Privy Council referred to in question 20, reservation of a minimum number of seats for students on the basis of creed had ceased.

Right to freedom of expression, assembly and association (articles 19, 21 and 22 of the Covenant)

27. **Mr. Boolell** (Mauritius), replying to question 21, said that the Independent Broadcasting Authority had been created after the dissolution of the State monopoly, to ensure fair and ethical broadcasting practices. A Complaints Committee dealt with infringements of advertising and privacy standards and unjust treatment in broadcast programmes. Anonymous complaints were inadmissible.

28. Replying to question 22, he said that freedom of assembly and freedom of expression were guaranteed under the Constitution. In the events leading to the case in question, the Commissioner of Police had exceeded his authority. As a result of the judgement, the Commissioner would be unlikely to prevent any peaceful demonstration unless he could satisfy a court

that the protest would interfere with the right to public order.

29. Replying to question 23, he said that the new legislation was being reviewed in conjunction with the International Labour Organization (ILO). The White Paper referred to in the report recommended that the right to strike should be restored as a last resort and subject to conditions. Consultations with ILO were proceeding, and the Government would comply with all ILO Conventions on the right to collective bargaining.

Dissemination of the Covenant and the Optional Protocol (article 2 of the Covenant)

30. **Mr. Boolell** (Mauritius), replying to question 24, said that police, lawyers and judges received regular training in human rights and the obligations of Mauritius under the Covenant. The Committee's concluding observations on the current report would be posted on the website of the Attorney General's Office and communicated to the National Human Rights Commission. The Commission disseminated information on the various international human rights instruments, including the Optional Protocol, to educational, labour and public organizations.

31. **The Chairperson** thanked the delegation of Mauritius for its replies and invited Committee members to ask any questions they might have concerning questions 17 to 24.

32. **Mr. Glele Ahanhanzo** said that he wanted to know what lessons had been drawn from the case *S. Tengur v. The Minister of Education*. He wondered whether Mauritius, as a multi-ethnic society, had any problems related to minorities and how it assured social cohesion. He was interested in the steps taken to teach children in their native language, Creole, and wanted to know how Creole language teachers were trained. He requested information on steps being taken to advance official use of the language, for example in the courts.

33. **Mr. O'Flaherty** expressed concern that the State party had not ratified the Refugee Convention and that its immigration and deportation laws did not integrate human rights criteria into the determination process. He would welcome information on the actual levels of deportation in recent years, the locations to which deportees had been sent and the extent to which people not yet legally admitted to Mauritian territory benefited from the provisions of the deportation laws. He wondered what measures Mauritius took to ensure that those who were not legally admitted to its territory were not subject to refoulement. He wondered whether legal assistance was available for proceedings under the Deportation Act, whether persons subject to a deportation order were subsequently informed of the possibility of judicial review and whether legal assistance was available in that connection. To what extent, if any, did the National Human Rights Commission get involved in such issues?

34. Efforts to disseminate the Covenant and its first Optional Protocol and train public officials appeared to focus exclusively on lawyers and the police, yet the implementation of human rights was a cross-cutting responsibility of Government, extending beyond legal officers. Accordingly, he would be grateful for information on the extent to which policy and programme level officials across all ministries were made aware of their Covenant-related responsibilities. The current approach to publicizing the concluding observations on the Attorney-General's website was passive. Was Government making a more active effort to disseminate those observations, including through the media? Notwithstanding the reference to teachers in the reply to question 24, there was no information on the extent to which human rights was promoted and knowledge of the Covenant was disseminated to teachers within the educational system.

35. **Sir Nigel Rodley** sought further clarification on the outcomes in cases of assault brought against police officers, since the material before the Committee was unclear about the disciplinary action that had been taken.

36. **Mr. Kälin** said that, while nobody expected Mauritius to become a major destination for refugees, it was clear that even small countries were now faced with asylum-seekers who claimed that they might suffer persecution if they were sent back to their countries of origin. There was no guarantee under the Deportation Act that the human rights of potential deportees would be protected. He welcomed the fact that the period of deportation detention — 28 days — was very short. However, that put pressure on the authorities to act quickly, a situation which was not conducive to ensuring that the persons concerned were provided with adequate opportunities to have their deportation reviewed. In that regard, he wondered whether Mauritius was considering adopting legislation

to amend the relevant legal instruments so as to ensure that the rulings of the Supreme Court were translated into everyday administrative practice.

37. **Mr. Castillero Hoyos** said that, although Mauritius had made significant positive strides in human rights legislation, some concerns remained. He wondered whether the Government envisaged expanding the mandate and enhancing the resources of the National Human Rights Commission and guaranteeing its independence. Why did that Commission insist on a conciliation procedure, in cases of both police brutality and sexual assault, which obliged victims to engage in a dialogue with those who assaulted them? A survey conducted by a non-governmental organization had established a close relationship between the significant number of cases of domestic violence and ill-treatment of women and the high incidence of alcohol and drug abuse. He wondered what measures the Government was taking to curb the consumption of drugs and alcohol.

38. He sought information on the status of efforts to reintroduce Muslim religious weddings, noting that they would probably lead to discrimination and entail a whole series of violations of rights, including rights to property. He wondered whether Mauritius had enacted any legal instrument to combat trafficking in human beings. Was it considering acceding to international instruments pertaining to asylum and refugees and incorporating them into its domestic laws? Regarding procedural safeguards, he wanted to know what measures had been taken to put an end to the practice by the Criminal Investigation Department and the Anti Drug Brigade of preventing detainee access to counsel. He also wondered whether the Merchant Shipping Act had been reformed in order to ensure that it was compatible with international standards against forced labour. Did the Government White Paper referred to in the oral introduction and the written replies envisage eliminating the prohibition of the right to strike and the 21-day cooling off period and making the law adopted applicable in the export-processing zones, where a wide range of complaints of abuse, ill-treatment and restrictions of workers' rights of association had been recorded? He would welcome information on the situation with respect to the rights of foreign workers in Mauritius, especially in the light of recent reports in the international media of a brutal repression by the police of a demonstration by Chinese workers protesting against the violation of their labour rights.

39. It would be interesting to know why Creole and the country's indigenous languages were not working languages of Parliament, along with English and French. He was concerned that the establishment of State cultural centres would lead to the ghettoization of minorities. He expressed concern at the reportedly racial and ethnic hiring guidelines used by the major hotel chains. What was the State party's position on that issue? Lastly, he wanted to know the measures that the Government had taken to increase the ethnic mix of the police force, which was heavily dominated by people of Indian descent.

40. **Mr. Boolell** (Mauritius) said that Creole, the mother tongue of the majority of Mauritians, had been used as a spoken language since the country's independence; it was gradually making the transition to a written language. A pilot project had laid the foundation for the teaching of Creole and agreement had been reached on the harmonization of its orthography and grammar. The Government had given very clear signals that Creole should be included in the school curriculum, with provision being made for teacher training programmes. While Mauritius, a secular State, was composed of people of different races and faiths, there was no distinction made between them before the law. Any persons who felt that they had been discriminated against could resort to the Supreme Court. Mauritius was a peaceful country, which had experienced only isolated incidents of tension in ethnic relations.

41. The police force was not dominated by people from a particular ethnic group. Recruitment into the Government sector was conducted by the Civil Service Commission on the basis of merit. Any persons who felt they had been unjustly treated in the recruitment process could file a case for judicial review by the Supreme Court. It would be wrong to see Mauritius through an ethnic prism. Forced labour would be removed from the statute books. Strikes were not illegal although a protracted procedure of mediation and reconciliation had to be exhausted first. New legislation would be introduced shortly to give full recognition to that right. Foreign workers enjoyed the same rights as Mauritian workers. Referring to the comment on passive publicity with respect to the dissemination of human rights, he noted that, while the point was well taken, the National Human Rights Commission, together with the Minister for Women's Affairs, the Ombudsperson for children and

non-governmental organizations, among others, were responsible for disseminating to non-law-enforcement officers information on treaties, treaty obligations and human rights.

42. Any police officer charged with an offence was automatically suspended until after the court had heard and made a ruling on the case. The Commissioner of Police waited for the court's ruling before taking disciplinary action. In most cases, the officer was dismissed from the force.

43. **Ms. Narain** (Mauritius) said that legislation on the Independent Broadcasting Authority applied to television as well as to radio broadcasting. The report of the United States Department of State probably had to do with the previous monopoly of Government-owned radio prior to the liberalization of the airwaves under the Independent Broadcasting Authority Act. While she wished to reassure the Committee that human rights considerations were taken into account at various levels of the deportation process, she agreed with members that it was highly desirable for human rights provisions to be part of the legislation itself and would accordingly convey their concerns to the appropriate Government authorities.

44. **The Chairperson** said there had been clear progress since the country's first report in 1996, particularly with respect to collective rights, noting the key role played by the Ombudsperson for children in those efforts. Committee members had rather mixed views on the Human Rights Commission. While some agreed that it had been able to report a number of criminal offences, others felt that the picture was incomplete. There were some problems in ensuring the independence and impartiality of the Commission. There was also concern that not all human rights violations were subject to criminal prosecution. The Committee would like the Commission to play a fully effective role.

45. She was particularly concerned about the status of the Covenant in the Constitution of Mauritius, especially article 15. Some constitutional provisions were compatible with the European Convention on Human Rights, but not yet with the Covenant. The delegation itself had acknowledged that articles 2 and 26 of the Covenant had not been fully reflected in the Constitution.

46. She was encouraged by the Government's efforts with respect to the Creole language, which was an international language spoken outside Mauritius, including in her own country. It would be very useful for teachers to be trained in Mauritius and for children to have written knowledge of the language. Given the broad ramifications of police brutality, the disciplinary measures indicated in the annexes to the report did not seem to be appropriate. As noted by several members of the Committee, there was a danger of the legislation on terrorism being too vague. Other problems worth highlighting included violence against women, abortion, excessive restrictions on trade union rights and freedom of the media.

47. **Mr. Leung Shing** (Mauritius) said that the Prevention of Terrorism Act might not be ideal, but it was the most reasonable approach to balancing the protection of national interests and the safeguarding of citizens' fundamental rights.

48. The Chagos Archipelago had been illegally detached from the territory of Mauritius, as described in paragraphs 7 to 13 of the report. His Government had kept the international community regularly informed of the plight of the inhabitants who had been forcibly displaced. Mauritius was determined to pursue the issue of the restoration of sovereignty through all legal and diplomatic channels. Military action was unrealistic for so small a country as Mauritius.

The meeting rose at 1.15 p.m.